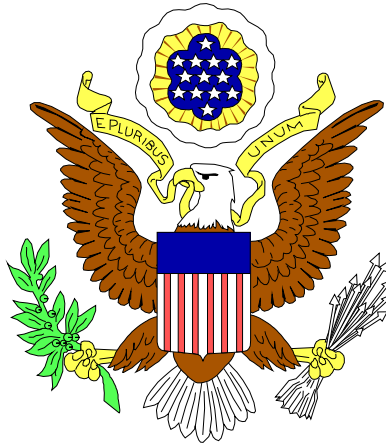


UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF NEW YORK



LOCAL RULES OF CRIMINAL PROCEDURE
(Effective May 1, 2003)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

IN RE ADOPTION OF LOCAL RULES OF CRIMINAL PROCEDURE

FOR THE

WESTERN DISTRICT OF NEW YORK

These rules were prepared by the Judges of the United States District Court for the Western District of New York, in collaboration with the federal bar.

It is so ordered that the rules set forth herein are adopted as the Rules of Criminal Procedure of the United States District Court for the Western District of New York together with all of the amendments to date to take effect on May 1, 2003 and to supersede all general rules previously adopted.

/s/ Richard J. Arcara

RICHARD J. ARCARA
Chief United States District Judge

/s/ Charles J. Siragusa

CHARLES J. SIRAGUSA
United States District Judge

/s/ David G. Larimer

DAVID G. LARIMER
United States District Judge

/s/ John T. Curtin

JOHN T. CURTIN
Senior United States District Judge

/s/ William M Skretny

WILLIAM M. SKRETNY
United States District Judge

/s/ John T. Elfvin

JOHN T. ELFVIN
Senior United States District Judge

/s/ Michael A. Telesca

MICHAEL A. TELESKA
Senior United States District Judge

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES DISTRICT COURT JUDGES

Richard J. Arcara, Chief Judge	U.S. Courthouse, Buffalo, NY
David G. Larimer	U.S. Courthouse, Rochester, NY
William M. Skretny	U.S. Courthouse, Buffalo, NY
Charles J. Siragusa	U.S. Courthouse, Rochester, NY
John T. Curtin, Senior Judge	U.S. Courthouse, Buffalo, NY
John T. Elfvin, Senior Judge	U.S. Courthouse, Buffalo, NY
Michael A. Telesca, Senior Judge	U.S. Courthouse, Rochester, NY

UNITED STATES BANKRUPTCY JUDGES

John C. Ninfo II, Chief Judge	U.S. Courthouse, Rochester, NY
Michael J. Kaplan	U.S. Courthouse, Buffalo, NY
Carl L. Bucki	U.S. Courthouse, Buffalo, NY

UNITED STATES MAGISTRATE JUDGES

Leslie G. Foschio	U.S. Courthouse, Buffalo, NY
Hugh B. Scott	U.S. Courthouse, Buffalo, NY
Jonathan W. Feldman	U.S. Courthouse, Rochester, NY
H. Kenneth Schroeder, Jr	U.S. Courthouse, Buffalo, NY
Marian W. Payson	U.S. Courthouse, Rochester, NY
Victor E. Bianchini	U.S. Courthouse, Buffalo, NY

CLERK OF UNITED STATES DISTRICT COURT

Rodney C. Early	Buffalo, NY
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CHIEF DEPUTY CLERK

Jeanne M. Spampata	Buffalo, NY
--------------------	-------------

DEPUTY-IN-CHARGE

Rachel B. Bandyh	Rochester, NY
------------------	---------------

CLERK OF UNITED STATES BANKRUPTCY COURT

Paul R. Warren	Buffalo, NY
----------------	-------------

CHIEF DEPUTY CLERK

Michelle A. Pierce	Buffalo, NY
--------------------	-------------

DEPUTY-IN-CHARGE

Todd M. Stickle	Rochester, NY
-----------------	---------------

UNITED STATES ATTORNEY

Michael A. Battle	Buffalo, NY
-------------------	-------------

ASSISTANT UNITED STATES ATTORNEY-IN-CHARGE

Bradley E. Tyler	Rochester, NY
------------------	---------------

FEDERAL PUBLIC DEFENDER

William G. Clauss	Rochester, NY
-------------------	---------------

FIRST ASSISTANT FEDERAL PUBLIC DEFENDER

Joseph B. Mistrett	Buffalo, NY
--------------------	-------------

CHIEF PROBATION OFFICER

Joseph A. Giacobbe	Buffalo, NY
--------------------	-------------

DEPUTY CHIEF PROBATION OFFICER

Thomas J. McGlynn	Rochester, NY
-------------------	---------------

UNITED STATES MARSHAL

Peter A. Lawrence	Rochester, NY
-------------------	---------------

CHIEF DEPUTY UNITED STATES MARSHAL

John Palillo	Buffalo, NY
--------------	-------------

TERRITORIAL JURISDICTION

Counties of:

Allegany	Genesee	Orleans	Wyoming
Cattaraugus	Livingston	Schuyler	Yates
Chautauqua	Monroe	Seneca	
Chemung	Niagara	Steuben	
Erie	Ontario	Wayne	

With the waters thereof.

Plans adopted by the United States District Court for the Western District of New York

Copies of the following plans that have been adopted by the Court are available on request in the Clerk's offices in Rochester and Buffalo¹:

- Amended Plan for the Disposition of Pro Se Cases
- Court Reporter Management Plan
- Criminal Justice Act Plan
- Jury Plan
- Plan for the Administration of the District Court Fund
- Revised Plan for the Prompt Disposition of Criminal Cases

¹The listed plans are for reference only and may be modified or abrogated by the Court in its discretion.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

LOCAL RULES OF CRIMINAL PROCEDURE

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RULE 1.1

TITLE

These rules shall be known as the Local Rules of Criminal Procedure for the United States District Court for the Western District of New York. These rules supplement the Federal Rules of Criminal Procedure and are numbered in accordance therewith.

RULE 1.2

THE "COURT"

Wherever in these local rules reference is made to the "Court", "Judge", or similar term, such term shall be deemed to include a Magistrate Judge unless the context requires otherwise.

RULE 6

GRAND JURY

(a) Grand juries may be summoned by order of the Court at such times as the public interest requires, to serve until discharged by the Court consistent with 18 U.S.C. §§ 3321, 3322 and Federal Rule of Criminal Procedure 6.

(b) All grand jury proceedings are governed by Federal Rule of Criminal Procedure 6.

(c) All motions for relief from orders or process of the grand jury, such as motions to quash subpoenas or motions to hold a witness in contempt, shall be made returnable before the Judge who impaneled the grand jury, or his or her designee.

RULE 7

FILING CASES

(a) Every criminal case shall be assigned by the Clerk to a Judge of the District upon the filing of the indictment or information.

(b) For purposes of case assignment, the Western District of New York is divided into two areas. Cases arising in the eight western counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming (the "Buffalo area"), shall ordinarily be assigned to a Judge in Buffalo. Cases arising in the nine eastern counties: Chemung, Livingston, Monroe, Ontario,

Schuyler, Seneca, Steuben, Wayne and Yates (the "Rochester area"), shall ordinarily be assigned to a Judge in Rochester. The assignment within these areas shall ordinarily be by random selection.

RULE 12.1

PROCEDURES FOR CRIMINAL CASES

Unless otherwise ordered by the District Judge to whom a criminal case is assigned, the following procedures shall apply to criminal indictments and informations:

(a) A United States Magistrate Judge is authorized to arraign defendants and accept not guilty pleas pursuant to Federal Rules of Criminal Procedure 10 and 11.

(b) After providing the attorneys for the government and all defendants the opportunity to be heard, at arraignment or at a date set at the arraignment, the Court shall issue an order scheduling discovery and motion practice in all criminal cases. Such scheduling order shall include, but not be limited to, the following:

(1) dates and terms and conditions for providing discovery between the government and the defendants;

(2) dates for filing motions, responses thereto, and oral arguments of motions; and

(3) such other matters as the Court deems appropriate in the exercise of its discretion and supervisory powers.

(c) Unless authorized by the Court, all motions by a defendant or the government shall be made returnable on the same date.

(d) Such scheduling order may subsequently be changed only by leave of the Court.

(e) As soon as practicable after the resolution of motions, the trial attorneys in the case shall meet with the District Judge to set a trial date and schedule any required pre-trial hearing.

RULE 12.2

MOTIONS

Unless otherwise ordered by the Court:

(a) Motions and hearings on all contested matters shall be heard on the dates and times set by each individual Judge in the Western District of New York. Information regarding such dates and times may be obtained from the Clerk's office.

(b) If the Judge assigned to hold the Court shall be absent, the Clerk of the Court shall adjourn the hearings on motions or applications to some convenient day.

(c) All motions and notice thereof shall be governed by the Federal Rules of Criminal Procedure. Original motion papers shall be filed in the Clerk's office, either at the United States

Courthouse, Buffalo, New York or at the United States Courthouse, Rochester, New York. Refer to Local Rule of Criminal Procedure 49.1 for more information on filing motion papers.

(d) Except as provided in subdivision (e), any application for adjournment of a motion shall be made by the attorney, or by an associate, to the Judge before whom the motion is to be argued. Such application shall be made to the Judge's courtroom deputy and not to the Judge's law clerk. In requesting an adjournment, the following guidelines shall be adhered to:

(1) The party seeking the adjournment shall first confer with all other parties before approaching the courtroom deputy;

(2) A suggested rescheduled date, agreeable to all parties, shall be determined, if possible;

(3) The party seeking the adjournment shall notify the courtroom deputy in writing, unless unforeseen circumstances prohibit written notice, of the request and the suggested new date; and

(4) The reason for the adjournment must be placed on the record either in open court or in writing, so that the Court may make findings as may be required by the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174.

(e) Requests for adjournments by *pro se* litigants must be made in writing, by letter to the Court, with copies to all other counsel in the case.

RULE 15

PROCEDURES FOR DEPOSITIONS BY OTHER THAN STENOGRAPHIC MEANS

A deposition by other than stenographic means (i.e. without the use of a stenographic record) may be taken only upon order of the Court. A deposition to be recorded on video tape and by stenographic means requires no prior order. The following procedures shall be followed:

(a) The deposition notice shall state that the deposition will be recorded both stenographically and on video tape. At the deposition, the operator of the camera shall be identified; however, nothing shall preclude utilization of an employee of the attorney who noticed the deposition from acting as the camera operator.

(b) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.

(c) Prior to trial, counsel for the party seeking to use the deposition at trial shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.

(d) Unresolved objections shall be submitted to the Court by way of a motion in limine made by the party seeking to use the deposition at trial. The motion may be made at any time after the deposition, but shall be made no later than one week before trial or in compliance with any date established by applicable order of the Court. The objected-to portion(s) of the transcript shall be annexed to such motion papers.

(e) In accordance with the Court's ruling on objections, the party seeking to use the deposition shall notify opposing counsel of the pages and line numbers of the deposition transcript which the party plans to delete from the video tape. The party seeking to use the video tape deposition at trial shall then edit the tape accordingly, and shall bear the expense of editing. If the Court overrules an objection made during the deposition, such objection need not be deleted. If requested, an instruction from the Court at the time the deposition is shown regarding objections heard on the tape will be given.

(f) At least three days before showing the tape, the party seeking to use the tape at trial shall deliver a copy of the edited tape to opposing counsel. Opposing counsel may only object at that time if the edited version does not comply with the Court's ruling and the agreement of counsel set forth above, or if the quality of the tape is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least 24 hours before the tape is to be shown.

(g) The party seeking to use the video tape deposition must provide the equipment necessary to do so in court.

RULE 23

FREE PRESS - FAIR TRIAL DIRECTIVES

(a) It is the duty of the lawyer or law firm, and of non-lawyer personnel employed by a lawyer's office or subject to a lawyer's supervision, private investigators acting under the supervision of a criminal defense lawyer, and government agents and police officers, not to release or authorize the release of non-public information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which they are associated, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(b) With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation (including government lawyers and lawyers for targets, subjects, and witnesses in the investigation) shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers or otherwise to aid in the investigation, if there is a substantial likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the administration of justice.

(c) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication if there is a substantial likelihood that such dissemination will interfere with a fair trial; except that the lawyer or the law firm may quote from or refer without comment to public records of the Court in the case.

(d) Statements concerning the following subject matters presumptively involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this rule:

- (1) The prior criminal record (including arrests, indictments or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation and family status; and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in the accused's apprehension or to warn the public of any dangers the accused may present;
- (2) The existence or contents of any confession, admission or statement given by the accused, or the refusal or failure of the accused to make any statement;
- (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) The identity, testimony or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
- (6) Information the lawyer or law firm knows is likely to be inadmissible at trial and would, if disclosed, create a substantial likelihood of prejudicing an impartial trial; and
- (7) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(e) Statements concerning the following subject matters presumptively do not involve a substantial likelihood that their public dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice within the meaning of this rule:

- (1) An announcement, at the time of arrest, of the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit and use of weapons), the identity of the investigating and arresting officer or agency and the length of investigation;

- (2) An announcement, at the time of seizure, stating whether any items of physical evidence were seized and, if so, a description of the items seized (but not including any confession, admission or statement);
- (3) The nature, substance or text of the charge, including a brief description of the offense charges;
- (4) Quoting or referring without comment to public records of the Court in the case;
- (5) An announcement of the scheduling or result of any state in the judicial process, or an announcement that a matter is no longer under investigation;
- (6) A request for assistance in obtaining evidence; and
- (7) An announcement, without further comment, that the accused denies the charges, and a brief description of the nature of the defense.

(f) Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against said lawyer.

(g) The Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses and any other matters which the Court may deem appropriate for inclusion in such order. In determining whether to impose such a special order, the Court shall consider whether such an order will be necessary to ensure an impartial jury and must find that other, less extreme available remedies, singly or collectively, are not feasible or would not effectively mitigate the pretrial publicity and bring about a fair trial. Among the alternative remedies to be considered are: change of venue, postponing the trial, a searching *voir dire*, emphatic jury instructions, and sequestration of jurors.

(h) Disciplinary action may be taken against any lawyer who violates the terms of this rule.

RULE 24.1

JURY TRIALS IN CRIMINAL CASES

Jury selection in a criminal case shall be governed by Federal Rules of Criminal Procedure 23 and 24 and by such procedures established by the trial judge.

RULE 24.2

JURORS

Selection of petit jurors is made by random selection pursuant to the most recently-adopted Jury Selection Plan for the Western District of New York, as approved by the Second Circuit Judicial Council. A copy of the Plan is available in the Clerk's office or on the Court's website at www.nywd.uscourts.gov.

RULE 26

EXHIBITS

(a) Prior to the beginning of a trial, the exhibits shall be marked and exhibit lists prepared as the Court directs.

(b) All exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after each day of trial by the party or attorney offering the exhibits, unless otherwise ordered by the Court. Immediately after the case is submitted to the trier of fact, all exhibits which were received into evidence shall be delivered to the courtroom deputy. After a verdict is rendered, responsibility for custody of all exhibits reverts back to the parties.

(c) In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file with the Clerk any exhibits to be transmitted to the appellate court as part of the record on appeal. Documents of unusual bulk or weight and physical exhibits, other than documents, shall remain in the custody of the attorney producing them who shall permit their inspection by any party for the purpose of preparing the record on appeal and who shall be charged with the responsibility for their safekeeping and transportation to the Court of Appeals. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(d) If any party, having received notice from the Clerk concerning the removal of exhibits, fails to do so within thirty days from the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

RULE 32

PRESENTENCE REPORT

(a) Disclosure of presentence reports shall, for sentencing purposes, be in accordance with Federal Rule of Criminal Procedure 32.

(b) No presentence reports shall be disclosed for any purpose other than sentencing in the absence of a compelling demonstration to the Court that disclosure of the report is required to meet the ends of justice.

(c) No copies of any report of presentence investigation shall be made by the government, the defendant, or any third party, except upon order of the Court.

(d) Any application to disclose such report shall be made to the sentencing Judge.

RULE 44

APPOINTMENT OF COUNSEL

(a) Pursuant to the Criminal Justice Act of 1964 as amended, 18 U.S.C. § 3006A, the Judges of the United States District Court for the Western District of New York have adopted a Plan for the adequate representation of any person otherwise financially unable to obtain representation.

(b) A panel of attorneys has been established under the Plan from which the Court may appoint counsel in a particular case. In addition to assignment from the panel of attorneys established under the Plan, the Court shall, whenever appropriate, appoint the Federal Public Defender.

(c) A copy of the Plan is available in the Clerk's office and on the Court's website at www.nywd.uscourts.gov. Reference should be made to the statute for further details, including procedures for obtaining payment for work done and/or reimbursement for expenses.

(d) It should be noted that under Rule 4(b) of the Rules of the Second Circuit Court of Appeals supplementing Federal Rules of Appellate Procedure, trial counsel has the duty to continue representing a defendant through the appellate process. Assigned counsel are advised to consider their appellate responsibilities when accepting criminal trial assignments.

RULE 46

DEPOSITS OF MONEY INTO COURT

(a) **General Orders Regarding Funds.** The Court's directions to the Clerk regarding (1) the investment of monies placed in the custody of the Court or of the Clerk and (2) the assessment of court fees against such monies are contained in various General Orders of the Court and amendments thereto, available in the Clerk's offices.

(b) **Monies Deposited Without a Special Order.** Whenever money is permitted by statute or rule to be deposited into court without leave of court (e.g. in condemnation proceedings governed by Federal Rule of Civil Procedure 71A(j)) or is directed by the Court to be deposited as a condition

to some form of relief (e.g. cash bail, cash bonds), General Orders shall govern the investment of such funds upon their receipt by the Clerk.

(c) **Monies Deposited With a Special Order.** Whenever statute or rule requires that leave of court be obtained for the deposit of money into the Court (e.g. Federal Rule of Civil Procedure 67), an order shall be promptly filed with the Clerk. If, and to the extent that, any such order fails to instruct the Clerk as to the handling of such funds, they shall be handled in accordance with the aforesaid General Orders.

(d) **Court Fees.** Such fees are promulgated and required by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1914(b).

(e) **Alternatives.** Parties and others are encouraged to consider alternatives which do not involve the receipt of monies by the Clerk, such as escrow accounts, and joint signature accounts in the names of counsel, and letters of credit. Such alternatives avoid the imposition of court fees and may provide greater flexibility to maximize yield for the benefit of the parties.

RULE 49.1

SERVICE AND FILING OF PAPERS

(a) All pleadings, notices and other papers shall be served and filed in accordance with the Federal Rules of Criminal Procedure. The party or a designee shall declare, by affidavit or certification, that he or she has provided all other parties in the action with all documents being filed with the Court.

(1) A party seeking or opposing any relief under the Federal Rules of Criminal Procedure shall file only such portion(s) of a deposition, interrogatory, request for documents, request for admission, or other material that is pertinent to the application.

(2) A party seeking to include in a record on appeal material which was not previously filed shall apply to the Court for an order requiring the Clerk to file such material. The party may make such application by motion or by stipulation of counsel.

(b) All orders, whether issued on notice or *ex parte*, together with the papers on which they were granted, shall be filed forthwith.

(c) Unless otherwise provided by the Court, a moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fifteen business days prior to the return date of the motion. The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least eight business days prior to the return date. Reply papers shall be filed and served at least three business days before the return date. Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and

memoranda shall be served on the parties and filed with the Clerk at least ten business days prior to the return date of the motion. Answering affidavits and memoranda shall be served and filed at least three business days prior to the return date. Sur-reply papers shall not be permitted unless otherwise ordered by the Court.

(d) A party seeking to shorten the notice requirements prescribed in subparagraph (c) must make a motion for an expedited hearing setting forth the reasons why an expedited hearing is required. The motion for an expedited hearing may, for cause shown, be made *ex parte*, and must be accompanied by

(1) the motion that such party is seeking to have heard on an expedited basis, together with supporting affidavits and memorandum of law; and

(2) a proposed order granting an expedited hearing, with dates for service of the motion (by personal service or overnight mail), responding papers, and the hearing left blank to be filled in by the Court.

Immediately after filing the motion for an expedited hearing (and accompanying documents) with the Clerk's office, counsel for the moving party shall personally deliver courtesy copies of such motion to chambers and await further instructions from the Court. In the event that the moving party is represented by out-of-town counsel who is unable to personally deliver courtesy copies, counsel shall mail such courtesy copies directly to chambers and shall contact chambers by telephone to request a waiver of this requirement.

(e) Without prior approval of the Court, briefs or memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length and reply briefs shall not exceed ten pages in length and shall comply with the requirements of Local Rule of Criminal Procedure 49.2. Applications to exceed these page limits shall be made in writing by letter to the Court with copies to all counsel, at least three business days before the date on which the brief must be filed.

(f) Good cause shall be shown for the making of any application *ex parte*. The papers in support of such application shall state attempts made to resolve the dispute through a motion on notice and/or state why notice of the application for relief may not be given.

(g) No filed document shall be removed from the Court except on order of the Court.

(h) Unless otherwise specified by statute or rule or requested by the Court, only the original of any papers shall be accepted for filing. Parties requesting date-stamped copies of documents filed with the Clerk must provide a self-addressed, adequately-sized envelope with proper postage affixed.

(i) Service of all papers other than a subpoena or a summons and complaint shall be permitted by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by either the Federal Rules of Criminal Procedure or these rules is measured from the service of a paper and service is by overnight delivery, one business day shall

be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address within the jurisdiction of the Court.

(j) No papers shall be served by electronic means unless, in accordance with Federal Rule of Civil Procedure 5(b)(2)(D), the party or parties being served has filed a written consent to accept service by this means. No papers shall be filed with the Clerk by electronic means.

RULE 49.2

FORM OF PAPERS

(a) All text and footnotes in pleadings, motions, legal memoranda and other papers shall be plainly and legibly written, typewritten in a font size at least 12-point type, printed or reproduced, without erasures or interlineations materially defacing them, in ink on durable white 8½" x 11" paper of good quality and fastened. All text in such documents shall be double-spaced.

(b) All papers shall be endorsed with the name of the Court, the title of the case, the proper docket number and the name or nature of the paper, in sufficient detail for identification. In any initial or amended pleading, counsel, or litigants acting *pro se*, must print or type the names of all parties in the case caption with accurate capitalization and spacing. Additionally, counsel or litigants acting *pro se* must number the parties in the case caption. All papers shall be signed by an attorney or by the litigant if appearing *pro se*, and the name, address and telephone number of each attorney or litigant so appearing shall be typed or printed thereon. All papers shall be dated and paginated.

RULE 49.3

STIPULATIONS

All stipulations affecting a case before the Court, except stipulations which are made in open court and recorded by the court reporter, shall be in writing and signed, and shall be filed. Except to prevent injustice, any stipulation which fails to satisfy these requirements shall not be given effect.

RULE 49.4

ORDERS

Orders of discontinuance or dismissal, whether by consent or otherwise, shall be presented to the Court for signature. After the Court has instructed a prevailing party to submit an order, the prevailing party shall submit to the Court a proposed order which has been approved by opposing counsel and which contains the endorsement of opposing counsel: "Approved as to form and substance."

RULE 49.5

APPEALS

(a) Appellant shall file a notice of appeal in accordance with Federal Rule of Appellate Procedure 3. Such notice of appeal shall include the names of the parties to the judgment and the names and addresses of their respective attorneys of record.

(b) In addition to the original notice of appeal, appellant shall file sufficient copies to serve all counsel and the Clerk of the Circuit Court of Appeals.

(c) Counsel share the responsibility of preparing the index for the record on appeal. Upon completion, the index shall be presented to the Clerk for transmittal to the United States Court of Appeals for the Second Circuit or to the United States Supreme Court.

(d) Counsel shall, wherever possible and consistent with the Federal Rules of Appellate Procedure, stipulate to the designation of less than the entire trial record.

(e) Counsel are cautioned to examine and follow both the Federal Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Second Circuit.

RULE 49.6

COPIES OF ORDERS

The Clerk shall provide one copy of every order entered, together with notice thereof, to each law firm representing one or more parties to, or non-party movants in, the action.

RULE 49.7

DOCUMENTS TO BE PROVIDED BY THE U.S. ATTORNEY'S OFFICE

(a) The United States Attorney's Office shall provide the Clerk with an adequate number of copies of charging instruments for distribution.

(b) The United States Attorney's Office is required to provide the Clerk with redacted copies of charging instruments and related documents when such documents are necessary.

RULE 50

SPEEDY TRIAL

Pursuant to the requirements of Federal Rule of Criminal Procedure 50(b), the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174, and the Federal Juvenile Delinquency Act, 18 U.S.C. §§ 5031-5037, the Judges of the Western District of New York have adopted a "Plan for the Prompt Disposition of Criminal Cases." This Plan incorporates the time limits which must be observed for filing an indictment or information, for arraignment, and for commencement of trial. It also sets out the procedures to be followed in this District for compliance with the above statutory mandates. A copy of the Plan is available in the Clerk's office. For further details, reference should be made to the Plan and to these statutes.

RULE 53

CAMERAS AND RECORDING DEVICES

(a) No one other than officials engaged in the conduct of court business and/or responsible for the security of the Court shall bring any camera, transmitter, receiver, portable telephone or recording device into the Court or its environs without written permission of a Judge of that Court.

Environs as used in this rule shall include the Clerk's office, all courtrooms, all chambers, grand jury rooms, petit jury rooms, jury assembly rooms, and the hallways outside such areas.

(b) The Presiding Judge may waive any provision of this rule for ceremonial occasions and for non-judicial public hearings or gatherings.

RULE 55.2

SEALING OF DOCUMENTS IN CRIMINAL CASES

(a) Except when otherwise required by statute or rule, there is a presumption that Court documents are accessible to the public and that a substantial showing is necessary to restrict access.

(b) When the sealing of a criminal matter is ordered, the Clerk shall inscribe in the public records of the Court only the case number, the fact that a case was filed under seal, the name of the District Judge or Magistrate Judge who ordered the seal, and (after assignment of the case to a District Judge and a Magistrate Judge in the normal fashion) the names of the assigned District Judge and the assigned Magistrate Judge.

(c) Documents authorized to be filed under seal or pursuant to a protective order must be presented to the Clerk in envelopes bearing sufficient identification. The envelopes shall not be sealed until the documents inside have been filed and docketed by the Clerk's office.

(d) Unless an order of the Court otherwise directs, all sealed documents will remain sealed after final disposition of the case. The party desiring that a sealed document be unsealed after disposition of the case must seek such relief by motion on notice.

RULE 56

SESSIONS OF COURT

Regular and continuous sessions of the Court shall be held at Buffalo and Rochester.

Special sessions of Court may be held at such places in the District and for such periods of time as may be practicable and as the nature of the Court's business may require.

RULE 57.1

COPIES OF LOCAL RULES

Copies of these rules, and the amendments and appendices to them, shall be available upon request in the offices of the Clerk of Court in both Rochester and Buffalo. Persons other than litigants who are permitted to proceed *in forma pauperis* in a pending case seeking to obtain a copy of these rules by mail must provide a self-addressed envelope of at least 9" x 12" in size with sufficient postage affixed.

RULE 57.2

ATTORNEY ADMISSION, APPEARANCE AND DISCIPLINE AND STUDENT LAW CLERKS AND PRACTICE

All rules related to attorney admission to practice, attorneys of record, discipline of attorneys, student practice and student law clerks are found in Local Rules of Civil Procedure 83.1, 83.2, 83.3, 83.6 and 83.7, all of which are incorporated by reference into these Local Rules of Criminal Procedure.

RULE 58.1

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) **Misdemeanor Cases.** All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a Magistrate Judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and Federal Rule of Criminal Procedure 58. In the event the defendant does not waive trial before the District Court as provided therein, the file shall be returned to the Clerk of the Court for assignment to a District Court Judge. The Magistrate Judge, may, however, set bond, appoint counsel, and accept a plea of not guilty without a waiver being executed.

(b) **Extradition Proceedings.** A United States Magistrate Judge is authorized to conduct extradition proceedings in accordance with 18 U.S.C. § 3184.

(c) **Felony Cases.** Upon the return of an indictment or the filing of an information charging a felony, arraignment may be held before a Judge or a Magistrate Judge. Further proceedings in the case shall be in accordance with the order of the Judge to whom the case is assigned. Felony cases include those in which an instrument charges both felony and non-felony offenses.

RULE 58.2

REVIEW AND APPEAL OF MAGISTRATE JUDGES' ACTIONS

(a) **Review.**

(1) Review of a Magistrate Judge's orders or of his or her proposed findings of fact and recommendations for disposition shall be governed by 28 U.S.C. § 636(b)(1). If the parties consent to trial before the Magistrate Judge, there shall be no review or appeal of interlocutory orders to the District Court.

(2) All orders of the Magistrate Judge issued pursuant to these rules, as authorized by 28 U.S.C. § 636(b)(1)(A), shall be final unless within ten days after being served with a copy of the Magistrate Judge's order, a party files with the Clerk and serves upon opposing counsel a written statement specifying the party's objections to the Magistrate Judge's order. The specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out.

(3) A party may object to proposed findings of fact and recommendations for dispositions submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), by filing with the Clerk and serving upon opposing counsel written objections to the proposed findings and recommendations within ten days after being served with a copy of such findings and recommendations, as provided in 28 U.S.C. § 636(b)(1)(C). The time for filing objections to the proposed findings and recommendations may be extended by direction of the District Judge. The written

objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.

(b) **Appeals from Judgments in Misdemeanor Cases (18 U.S.C. § 3402).** Appeals from a decision, order or judgment of conviction by a Magistrate Judge shall be taken pursuant to 18 U.S.C. § 3402 and Federal Rule of Criminal Procedure 58. Appeals shall be given a criminal case number and assigned by the Clerk to a District Judge. The appellant shall, within thirty days of the filing of the notice of appeal, file the record and shall also file a typewritten memorandum with the Clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall concurrently serve a copy of the memorandum on the appellee(s). The appellee(s) shall file an answering memorandum within thirty days of the filing of the appellant's memorandum. The Judge may extend these time limits upon a showing of good cause. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his or her memorandum within the time provided by the rule or any extension thereof, the Court may dismiss the appeal.

(c) **Appeals from Other Orders of a Magistrate Judge.** Appeals from any other decisions and orders of a Magistrate Judge not provided for in this rule shall be taken as provided by governing statute, rule or decisional law.

RULE 58.3

FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE IN PETTY OFFENSE MATTERS

(a) This rule incorporates the rules of court relative to forfeiture of collateral in lieu of appearance in petty offense matters, copies of which are available in the Clerk's office.

(b) For petty offenses originating under the applicable federal statute or regulations or applicable state statute by virtue of the Assimilative Crimes Act (18 U.S.C. § 13) occurring within the territorial jurisdiction of a United States Magistrate Judge including areas within the boundaries of United States military installations, federal buildings and grounds, national forests, and property under the charge and control of the Veterans Administration, the person so charged shall post collateral and may, in lieu of appearance, waive appearance before a United States Magistrate Judge, and consent to the forfeiture of collateral. If collateral is forfeited, such action shall be tantamount to a finding of guilt.

(c) A list of petty offenses is available in the Clerk's office appended to the rules of court referred to in subdivision (a) of this local rule. Those offenses marked with an asterisk (*) and for which no amount of collateral is shown require a mandatory appearance before a United States Magistrate Judge.

(d) If a person charged with an offense under section (a) of this rule fails to post and forfeit collateral, any punishment, including fine, imprisonment or probation may, upon conviction, be imposed within the limits established by the applicable law.

(e) Nothing contained in this rule shall prohibit a law enforcement officer from arresting a person for the commission of any offense, including those for which collateral may be posted and forfeited, in which event the arrested person shall without unnecessary delay be taken before the nearest available United States Magistrate Judge or, in the event that a Magistrate Judge is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041, as provided in Federal Rule of Criminal Procedure 5.

RULE 59

MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modifications as may be necessary to meet emergencies or to avoid injustice or great hardship.

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